

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

As Engrossed: S3/15/23

A Bill

HOUSE BILL 1438

5 By: Representative Maddox
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE UNIFORM MONEY SERVICES ACT; AND
10 FOR OTHER PURPOSES.

Subtitle

14 TO AMEND THE UNIFORM MONEY SERVICES ACT.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Arkansas Code § 23-55-102 is amended to read as follows:
20 23-55-102. Definitions.

21 In this chapter:

22 (1) "Applicant" means a person that files an application for a
23 license under this chapter.

24 (2) "Authorized delegate" means a person a licensee designates
25 to provide money services on behalf of the licensee.

26 (3) "Bank" means an institution organized under federal or state
27 law which:

28 (A) accepts demand deposits or deposits that the depositor
29 may use for payment to third parties and engages in the business of making
30 commercial loans; or

31 (B) engages in credit card operations and maintains only
32 one office that accepts deposits, does not accept demand deposits or deposits
33 that the depositor may use for payments to third parties, does not accept a
34 savings or time deposit less than \$100,000, and does not engage in the
35 business of making commercial loans.

36 (4) "Commissioner" means the Securities Commissioner.



1 (5)(A) "Control" means:

2 ~~(A)(i)~~ ~~ownership of, or~~ the power to vote, directly
3 or indirectly, at least 25 percent of a class of voting securities or voting
4 interests of a licensee or person in control of a licensee;

5 ~~(B)(ii)~~ power to elect or appoint a majority of key
6 individuals or executive officers, managers, directors, trustees, or other
7 persons exercising managerial authority of a licensee or person in control of
8 a licensee; or

9 ~~(C)(iii)~~ the power to exercise directly or
10 indirectly, a controlling influence over the management or policies of a
11 licensee or person in control of a licensee.

12 (B)(i) A person:

13 (a) is presumed to exercise a controlling
14 influence if the person holds the power to vote, directly or indirectly, at
15 least 10 percent of the outstanding voting shares or voting interests of a
16 licensee or person in control of a licensee; and

17 (b) that is presumed to exercise a controlling
18 influence may rebut the presumption of control if the person is a passive
19 investor.

20 (ii) For purposes of determining the percentage of a
21 person controlled by any other person, the person's interest shall be
22 aggregated with the interest of any other immediate family member, including
23 without limitation the person's spouse, parents, children, siblings, mothers-
24 in law, fathers-in law, sons-in law, daughters-in law, brothers-in law,
25 sisters-in law, and any other person who shares the person's home.

26 (6) "Currency exchange" means receipt of revenues from the
27 exchange of money of one government for money of another government.

28 (7) "Executive officer" means a president, chairperson of the
29 executive committee, chief financial officer, responsible individual, or
30 other individual who performs similar functions.

31 (8) "Key individual" means an individual who is ultimately
32 responsible for establishing or directing policies and procedures of a
33 licensee, including without limitation an executive officer, manager,
34 director, or trustee.

35 (9) "Licensee" means a person licensed under this chapter.

36 ~~(9)(10)~~ "Monetary value" means a medium of exchange, whether or

1 not redeemable in money.

2 ~~(10)~~(11) "Money" means a medium of exchange that is authorized
3 or adopted by the United States or a foreign government. The term includes a
4 monetary unit of account established by an intergovernmental organization or
5 by agreement between two or more governments.

6 ~~(11)~~(12) "Money services" means money transmission or currency
7 exchange.

8 ~~(12)(A)~~(13)(A) "Money transmission" means any of the following:

9 (i) selling or issuing payment instruments, stored
10 value, or prepaid access, or receiving money, virtual currency, or monetary
11 value for transmission to a person located in this state;

12 (ii) selling or issuing stored value to a person
13 located in this state;

14 (iii) facilitating, selling, trading, transferring,
15 or converting virtual currency or monetary value in this state; or

16 (iv) receiving money for transmission from a person
17 located in this state.

18 (B) "Money transmission" does not include:

19 (i) providing:

20 (a) online services;

21 (b) telecommunication services;

22 (c) network access;

23 (d) delivery services such as courier or
24 package delivery services; or

25 (ii) acting as a mere conduit for the transmission
26 of data.

27 ~~(13)~~(14) "Outstanding," with respect to a payment instrument,
28 means issued or sold by or for the licensee and reported as sold but not yet
29 paid by or for the licensee.

30 (15) "Passive investor" means a person that:

31 (A) does not have the power to elect:

32 (i) a majority of key individuals;

33 (ii) a majority of executive officers, managers,
34 directors, or trustees; or

35 (iii) other persons exercising managerial authority
36 of a person in control of a licensee;

1 (B) is not employed by and does not have any managerial
2 duties of the licensee or person in control of a licensee;

3 (C) does not have the power to exercise, directly or
4 indirectly, a controlling influence over the management or policies of a
5 licensee or person in control of a licensee; and

6 (D) either:

7 (i) attests to subdivisions (15)(A)-(C), in a form
8 and in a medium prescribed by the commissioner; or

9 (ii) commits to the passivity characteristics of
10 subdivisions (15)(A)-(C), in a written document.

11 ~~(14)~~(16) "Payment instrument" means a written or electronic
12 check, draft, money order, traveler's check, or other written or electronic
13 instrument for the transmission or payment of money or monetary value,
14 whether or not negotiable. The term does not include a credit card voucher,
15 letter of credit, or instrument that is redeemable by the issuer in goods or
16 services stored value or any instrument that:

17 (A) is redeemable by the issuer only for goods or services
18 provided by the issuer or its affiliate or franchisees of the issuer or its
19 affiliate, except to the extent required by applicable law to be redeemable
20 in cash for its cash value; or

21 (B) not sold to the public but issued and distributed as
22 part of a loyalty, rewards, or promotional program.

23 ~~(15)~~(17) "Person" means an individual, corporation, business
24 trust, estate, trust, partnership, limited liability company, association,
25 joint venture, government; governmental subdivision, agency or
26 instrumentality; public corporation; or any other legal or commercial entity.

27 ~~(16)~~(18) "Record" means information that is inscribed on a
28 tangible medium or that is stored in an electronic or other medium and is
29 retrievable in perceivable form.

30 ~~(17)~~ "Responsible individual" means an individual who is
31 employed by a licensee and has principal managerial authority over the
32 provision of money services by the licensee in this State.

33 ~~(18)~~(19) "State" means a State of the United States, the
34 District of Columbia, the Commonwealth of Puerto Rico, the United States
35 Virgin Islands, or any territory or insular possession subject to the
36 jurisdiction of the United States.

1 ~~(19)(A)~~(20)(A) "Stored value" means monetary value ~~that is~~
2 ~~evidenced by an electronic record~~ representing a claim against the issuer
3 ~~stored on an electronic or digital medium or device, including without~~
4 ~~limitation a card, and evidenced by an electronic or digital record~~ evidenced
5 by an electronic or digital record, and that is intended and accepted for use
6 as a means of redemption for money or monetary value, or payment for goods or
7 services.

8 (B) "Stored value" includes without limitation prepaid
9 access as defined by 31 C.F.R. § 1010.100, as it existed on January 1, 2023.

10 (C) "Stored value" does not include any prepaid access a
11 payment instrument or closed loop stored value or stored value ~~that is only~~
12 ~~redeemable by the issuer for goods or services provided by the issuer or an~~
13 ~~affiliate of the issuer except to the extent required by applicable law to be~~
14 ~~redeemable in cash for the cash value of the goods or services~~ not sold to
15 the public but issued and distributed as part of a loyalty, rewards, or
16 promotional program.

17 (21) "Tangible net worth" means the aggregate assets of a
18 licensee excluding all intangible assets, less liabilities, as determined
19 according to generally accepted accounting principles.

20 ~~(20)~~(22) "Unsafe or unsound practice" means a practice or
21 conduct by a person licensed to engage in money transmission or an authorized
22 delegate of such a person which creates the likelihood of material loss,
23 insolvency, or dissipation of the licensee's assets, or otherwise materially
24 prejudices the interests of its customers.

25 ~~(21) "Prepaid access" means access to funds or the value of~~
26 ~~funds that have been paid in advance that can be retrieved or transferred in~~
27 ~~the future through an electronic device or vehicle, including without~~
28 ~~limitation a card, code, electronic serial number, mobile identification~~
29 ~~number, or personal identification number.~~

30 ~~(22)(A)~~(23)(A) "Virtual currency" means a digital representation
31 of value that:

32 (i) is used as a medium of exchange, a unit of
33 account, or a store of value; and

34 (ii) does not have legal tender status as recognized
35 by the United States Department of the Treasury.

36 (B) "Virtual currency" does not include the software or

1 protocols governing the transfer of a digital representation of value or
2 other uses of a virtual distributed ledger system to verify ownership or
3 authenticity in a digital capacity when the virtual currency is not used as a
4 medium of exchange.

5
6 SECTION 2. Arkansas Code § 23-55-103, concerning exclusions under the
7 Uniform Money Services Act, is amended to add an additional subdivision to
8 read as follows:

9 (16) the exchange, transfer, or storage of virtual currency or to
10 virtual currency administration if any of the following apply to the
11 transaction:

12 (A) the Electronic Fund Transfer Act, 15 U.S.C. § 1693 et
13 seq., as it existed on January 1, 2023;

14 (B) the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a
15 et seq., as it existed on January 1, 2023;

16 (C) the Commodity Exchange Act, 7 U.S.C. §§ 1 et seq., as
17 it existed on January 1, 2023; or

18 (D) the Arkansas Securities Act, § 23-42-101-101 et seq.

19
20 SECTION 3. Arkansas Code § 23-55-202(g), concerning information
21 required by an officer, director, responsible individual, and owner applicant
22 under the Uniform Money Services Act, is amended to read as follows:

23 ~~(g)(1) Each officer, director, responsible individual, and owner~~
24 ~~applicant shall furnish information concerning his or her identity~~ An
25 individual in control of a licensee or applicant, an individual who seeks to
26 acquire control of a licensee, and each key individual shall furnish to the
27 commissioner, through the Nationwide Multistate Licensing System, the
28 following:

29 (1) the individual's fingerprints for submission to the Federal
30 Bureau of Investigation and the commissioner for purposes of a national
31 criminal history background check, unless the person currently resides
32 outside of the United States and has resided outside of the United States for
33 the last 10 years.

34 ~~(2) The information described in subdivision (g)(1) shall~~
35 ~~include:~~

36 ~~(A) a state and national criminal background check to be~~

1 ~~conducted by the Identification Bureau of the Division of Arkansas State~~
2 ~~Police or the Federal Bureau of Investigation; and~~

3 ~~(B) other pertinent facts, as the commissioner may~~
4 ~~reasonably require personal history and experience in a form and in a medium~~
5 ~~prescribed by the commissioner to obtain the following information:~~

6 (A)(i) a credit report from an independent consumer
7 reporting agency, unless the individual does not have a Social Security
8 number.

9 (ii) if an individual does not have a Social
10 Security number, then the requirement for a credit report from an independent
11 consumer reporting agency under subdivision (g)(2)(A)(i) is waived;

12 (B) information related to any criminal convictions or
13 pending criminal charges; and

14 (C) information related to any regulatory or
15 administrative action or any civil litigation involving claims of fraud,
16 misrepresentation, conversion, mismanagement of funds, breach of fiduciary
17 duty, or breach of contract.

18 ~~(3)(A) As part of an application for a license under this~~
19 ~~chapter, or periodically upon license renewal, the commissioner may receive~~
20 ~~criminal history record information that includes nonconviction information~~
21 ~~as defined in § 12-12-1001 if an individual has resided outside of the United~~
22 ~~States at any time in the last 10 years, an investigative background report~~
23 ~~prepared by an independent search firm that meets the following requirements:~~

24 (A) at a minimum, the independent search firm shall:

25 (i) demonstrate that it has sufficient knowledge,
26 resources, and employs accepted and reasonable methodologies to conduct the
27 research for a background report; and

28 (ii) not be affiliated with or have an interest with
29 the individual the independent search firm is researching; and

30 (B) at a minimum, the investigative background report
31 shall:

32 (i) be written in the English language; and

33 (ii) contain the following:

34 (a) if available in the individual's current
35 jurisdiction of residency, a comprehensive credit report, or any equivalent
36 information obtained or generated by the independent search firm to

1 accomplish the report, including without limitation a search of the court
 2 data in the countries, provinces, states, cities, towns, and contiguous areas
 3 where the individual resided and worked;

4 (b) criminal records information for the past
 5 10 years, including without limitation felonies, misdemeanors, or similar
 6 convictions for violations of law in the countries, provinces, states,
 7 cities, towns, and contiguous areas where the individual resided and worked;

8 (c) employment history;

9 (d) media history, including an electronic
 10 search of national and local publications, wire services, and business
 11 applications; and

12 (e) financial services-related regulatory
 13 history, including without limitation money transmissions, securities,
 14 banking, insurance, and mortgage-related industries.

15 ~~(B) The State Securities Department may only disseminate~~
 16 ~~nonconviction information obtained under this section to a criminal justice~~
 17 ~~agency.~~

18 ~~(4) This subsection does not apply if an applicant or an~~
 19 ~~applicant's corporate parent is a publicly traded entity.~~

21 SECTION 4. Arkansas Code § 23-55-204 is amended to read as follows:

22 23-55-204. Surety bonds.

23 ~~(a)(1) Except as otherwise provided in subsection (b), a money~~
 24 ~~transmission licensee shall maintain a surety bond in an amount based on the~~
 25 ~~previous year's:~~

26 ~~(A) Money transmission dollar volume;~~

27 ~~(B) Payment instrument dollar volume; and~~

28 ~~(C) Stored value dollar volume.~~

29 ~~(2) The minimum surety bond amount shall be at least \$10,000,~~
 30 ~~and the maximum surety bond amount shall not exceed \$300,000.~~

31 ~~(3) The commissioner may set specific required bond amounts by~~
 32 ~~rule An applicant for a money transmission license shall provide, and a~~
 33 ~~licensee at all times shall maintain, security consisting of a surety bond in~~
 34 ~~a form satisfactory to the Securities Commissioner.~~

35 ~~(b) The surety bond must be in a form satisfactory to the commissioner~~
 36 ~~The amount of the required security under this section shall be:~~

1 (1) the greater of \$100,000 or an amount equal to 100 percent of
2 the licensee's average daily money transmission liability in this state,
3 calculated for the most recently completed three-month period, up to a
4 maximum of \$500,000; or

5 (2) if the licensee's tangible net worth exceeds 10 percent of
6 total assets, then the licensee shall maintain a surety bond of \$100,000.

7 ~~(c) Every surety bond shall provide for suit on the bond by any person~~
8 ~~who has a cause of action under this chapter. The aggregate liability of the~~
9 ~~surety to all persons, cumulative or otherwise, may not exceed the principal~~
10 ~~sum of the bond~~ A licensee that maintains a bond in the maximum amount
11 provided for in subsection (b), as applicable, is not required to calculate
12 its average daily money transmission liability in this state for purposes of
13 § 23-55-702.

14 ~~(d) A surety bond must cover claims for so long as the commissioner~~
15 ~~specifies, but for at least five years after the licensee ceases to provide~~
16 ~~money services in this State. However, the commissioner may permit the amount~~
17 ~~of a surety bond to be reduced or eliminated before the expiration of that~~
18 ~~time to the extent the amount of the licensee's payment instruments or~~
19 ~~stored value and prepaid access obligations outstanding in this State is~~
20 ~~reduced~~ A licensee may exceed the maximum required bond amount under § 23-55-
21 702(b)(6).

22 ~~(e) The commissioner may increase the amount of a surety bond required~~
23 ~~to a maximum of \$1,000,000 if the financial condition of a licensee so~~
24 ~~requires, as evidenced by reduction of net worth, financial losses, or other~~
25 ~~relevant criteria.~~

26
27 SECTION 5. Arkansas Code § 23-55-207 is amended to read as follows:
28 23-55-207. Net worth.

29 ~~(a) A licensee under this article shall maintain a net worth that is~~
30 ~~calculated at \$10,000 for every \$1,000,000 of the total previous year's:~~

31 ~~(1) Money transmission dollar volume;~~

32 ~~(2) Payment instrument dollar volume; and~~

33 ~~(3) Stored value dollar volume~~ A licensee shall maintain at all
34 times a tangible net worth that is the greater of:

35 (1) \$100,000 or 3 percent of total assets for the first
36 \$100,000,000;

1 (2) 2 percent of additional assets for \$100,000,000 to
2 \$1,000,000,000; and

3 (3) 0.5 percent of additional assets for any amount over
4 \$1,000,000,000.

5 ~~(b)(1) A licensee shall maintain a minimum net worth of at least~~
6 ~~\$50,000.~~

7 ~~(2) The commissioner may set specific required net worth amounts~~
8 ~~by rule Tangible net worth shall be demonstrated at initial application by~~
9 ~~the applicant's most recent audited or unaudited financial statements under §~~
10 ~~23-55-202(c)(6).~~

11 (c) Notwithstanding the other provisions of this section, the
12 Securities Commissioner, for good cause shown, may exempt an applicant or
13 licensee, in part or in whole, from the requirements of this section.
14

15 SECTION 6. Arkansas Code § 23-55-601(i), concerning the Securities
16 Commissioner's authority to conduct examinations and investigations, is
17 amended to add an additional subdivision to read as follows:

18 (3) The commissioner or the commissioner's designee may request
19 through a record the books, accounts, papers, documents, other information,
20 records, and files to be provided to the commissioner on 7 business-days'
21 notice.
22

23 SECTION 7. Arkansas Code § 23-55-604 is amended to read as follows:

24 23-55-604. ~~Change of control~~ Acquisition of control.

25 ~~(a)(1) A licensee shall:~~

26 ~~(1) give the commissioner notice in a record of a proposed~~
27 ~~change of control within 15 days after learning of the proposed change of~~
28 ~~control;~~

29 ~~(2) request approval of the acquisition; and~~

30 ~~(3) submit a nonrefundable fee of \$1,000 with the notice~~ A
31 person, or a group of persons acting in concert, seeking to acquire control
32 of a licensee shall obtain the written approval of the Securities
33 Commissioner before acquiring control.

34 (2) If an individual becomes a key individual of the licensee in
35 the ordinary course of business, then the individual is not deemed to have
36 acquired control of a licensee and is not subject to this section.

1 ~~(b) After review of a request for approval under subsection (a), the~~
2 ~~commissioner may require the licensee to provide additional information~~
3 ~~concerning the proposed persons in control of the licensee. The additional~~
4 ~~information must be limited to the same types required of the licensee or~~
5 ~~persons in control of the licensee as part of its original license or renewal~~
6 ~~application. A person or a group of persons acting in concert seeking to~~
7 ~~acquire control of a licensee shall submit, in cooperation with the licensee:~~

8 ~~(1) an application in a form and in a medium prescribed by the~~
9 ~~commissioner; and~~

10 ~~(2) a nonrefundable fee of \$1,000 with a request for approval.~~

11 ~~(c) The commissioner shall approve a request for change of control~~
12 ~~under subsection (a) if, after investigation, the commissioner determines~~
13 ~~that the person or group of persons requesting approval has the competence,~~
14 ~~experience, character, and general fitness to operate the licensee or person~~
15 ~~in control of the licensee in a lawful and proper manner and that the public~~
16 ~~interest will not be jeopardized by the change of control. Upon request, the~~
17 ~~commissioner may permit a licensee or the person or group of persons acting~~
18 ~~in concert to submit some or all information required under subdivision~~
19 ~~(b)(1) without using the Nationwide Multistate Licensing System.~~

20 ~~(d) When an application for a change of control under this article is~~
21 ~~complete, the commissioner shall notify the licensee in a record of the date~~
22 ~~on which the request was determined to be complete and:~~

23 ~~(1) the commissioner shall approve or deny the request within~~
24 ~~120 days after that date; or~~

25 ~~(2) if the request is not approved or denied within 120 days~~
26 ~~after that date:~~

27 ~~(A) the request is deemed approved; and~~

28 ~~(B) the commissioner shall permit the change of control~~
29 ~~under this section, to take effect as of the first business day after~~
30 ~~expiration of the period. The application under subdivision (b)(1) shall~~
31 ~~include information required by § 23-55-202(g) for a new key individual who~~
32 ~~has not previously completed the requirements of § 23-55-202(g) for a~~
33 ~~licensee.~~

34 ~~(e)(1) The commissioner, by rule or order, may exempt a person from~~
35 ~~any of the requirements of subsection (a)(2) and (3) if it is in the public~~
36 ~~interest to do so. If an application for acquisition of control under this~~

1 section appears to include all the items and address all of the matters that
2 are required, then the application shall be considered complete, and the
3 commissioner shall promptly notify the applicant in a record of the date that
4 the application was determined to be complete.

5 (2) The commissioner shall approve or deny the application
6 within 60 days after the completion date.

7 (3) If the application is not approved or denied within 60 days
8 after the completion date, then:

9 (i) the application is approved; and

10 (ii) the person or group of persons acting in
11 concert are not prohibited from acquiring control.

12 (4) The commissioner may for good cause extend the application
13 period.

14 (f) ~~Subsection (a) does not apply to a public offering of securities~~ A
15 determination by the commissioner that an application is complete and the
16 application is accepted for processing means that the application, on its
17 face, appears to include all of the items and address all of the matters that
18 are required but is not an assessment of the substance of the application or
19 of the sufficiency of the information provided.

20 (g)(1) ~~{Repealed.}~~ If an application is filed and considered complete
21 under subsection (e), then the commissioner shall investigate the financial
22 condition and responsibility, financial and business experience, character,
23 and general fitness of the person or group of persons acting in concert
24 seeking to acquire control.

25 (2) The commissioner shall approve an application for
26 acquisition of control under this section if the commissioner finds that all
27 of the following conditions have been fulfilled:

28 (A) the requirements of subsections (b) and (d) have been
29 met, as applicable; and

30 (B) the financial condition and responsibility, financial
31 and business experience, competence, character, and general fitness of the
32 person or group of persons acting in concert seeking to acquire control, and
33 the competence, experience, character, and general fitness of the key
34 individuals and persons that would be in control of the licensee after the
35 acquisition of control indicate that it is in the interest of the public to
36 permit the person or group of persons acting in concert to control the

1 licensee.

2 (h)(1) The commissioner shall issue a formal written notice of the
3 denial of an application to acquire control within 30 days of the decision to
4 deny the application.

5 (2) The commissioner shall state in the notice of denial the
6 specific reasons for the denial of the application.

7 (3) An applicant whose application is denied by the commissioner
8 under this subsection (h) may appeal within 30 days after receipt of the
9 written notice of the denial.

10 (i) The requirements of subsections (a) and (b) do not apply to:

11 (1) a person that acts as a proxy for the sole purpose of
12 voting:

13 (A) at a designated meeting of the shareholders or holders
14 of voting shares; or

15 (B) interests of a licensee or a person in control of a
16 licensee;

17 (2) a person that acquires control of a licensee by devise or
18 descent;

19 (3) a person that acquires control of a licensee:

20 (A) as a personal representative, custodian, guardian,
21 conservator, or trustee;

22 (B) as an officer appointed by a court of competent
23 jurisdiction; or

24 (C) by operation of law;

25 (4) a person that is exempt under § 23-55-103;

26 (5) a person that the commissioner determines is not subject to
27 subsection (a) based on the public interest;

28 (6) a public offering of securities of a licensee or a person in
29 control of a licensee; or

30 (7) an internal reorganization of a person in control of the
31 licensee if the ultimate person in control of the licensee remains the same.

32 (j) Persons in subdivisions (i)(2)-(4) and subdivisions (i)(6) and
33 (7), in cooperation with the licensee, shall notify the commissioner within
34 15 days after the acquisition of control.

35 (k)(1) The requirements of subsections (a) and (b) do not apply to a
36 person that has complied with and received approval to engage in money

1 transmission under this chapter or was identified as a person in control in a
2 prior application filed with and approved by the commissioner or by a money
3 services business accredited state under a multistate licensing process if:

4 (A) the person has not had a license revoked or suspended
5 or controlled a licensee that has had a license revoked or suspended while
6 the person was in control of the licensee in the previous 5 years;

7 (B) the person is a licensee, and the person is well
8 managed and has received at least a satisfactory rating for compliance at its
9 most recent examination by a money services business accredited state if the
10 rating was given;

11 (C) the licensee to be acquired is projected to meet the
12 requirements of §§ 23-55-204, 23-55-207, and 23-55-701 after the acquisition
13 of control is completed, and if the person acquiring control is a licensee,
14 then that licensee is also projected to meet the requirements of §§ 23-55-
15 204, 23-55-207, and 23-55-701 after the acquisition of control is completed;

16 (D) the licensee to be acquired shall not implement any
17 material changes to its business plan as a result of the acquisition of
18 control, and if the person acquiring control is a licensee, then that
19 licensee also shall not implement any material changes to its business plan
20 as a result of the acquisition of control; and

21 (E) the person provides notice of the acquisition in
22 cooperation with the licensee and attests to subdivisions (k)(1)(A)-(D) in a
23 form and in a medium prescribed by the commissioner.

24 (2) If the notice is not disapproved within 30 days after the
25 date that the notice was determined to be complete, then the notice is
26 approved.

27 (1)(1) Before filing an application for approval to acquire control of
28 a licensee, a person may request in writing a determination from the
29 commissioner as to whether or not the person would be considered a person in
30 control of a licensee upon consummation of a proposed transaction.

31 (2) If the commissioner determines that the person would not be
32 a person in control of a licensee, then the proposed person and transaction
33 are not subject to the requirements of subsections (a) and (b).

34 (m)(1) A licensee adding or replacing a key individual shall:

35 (A) provide notice in a manner prescribed by the
36 commissioner within 15 days after the effective date of the key individual's

1 appointment; and

2 (B) provide information as required by this section within
3 45 days of the effective date of the key individual's appointment.

4 (2) Within 90 days of the date that the notice provided under
5 subsection (a) was determined to be complete, the commissioner may issue a
6 notice of disapproval of a key individual if the competence, experience,
7 character, or integrity of the individual are such that it would not be in
8 the best interests of the public or the customers of the licensee to permit
9 the individual to be a key individual of the licensee.

10 (3)(A) A notice of disapproval shall:

11 (i) contain a statement of the basis for
12 disapproval; and

13 (ii) be sent to the licensee and the disapproved
14 individual.

15 (B) A licensee may appeal a notice of disapproval within
16 30 days after receipt of the notice of disapproval.

17 (4) If the notice provided under subsection (a) is not
18 disapproved within 90 days after the date that the notice was determined to
19 be complete, then the key individual is approved.

20
21 SECTION 8. Arkansas Code § 23-55-605(c), concerning records maintained
22 outside this state under the Uniform Money Services Act, is amended to read
23 as follows:

24 (c) Records may be maintained outside this State if they are made
25 accessible and available to the commissioner on seven business-days' notice
26 that is sent in a record.

27
28 SECTION 9. Arkansas Code Title 23, Chapter 55, Article 6, is amended
29 to add additional sections to read as follows:

30 23-55-610. Timely transmission.

31 (a) Every licensee shall forward all money received for transmission
32 according to the terms of the agreement between the licensee and the sender
33 unless the licensee has a reasonable belief or a reasonable basis to believe
34 that the sender may be a victim of fraud or that a crime or violation of law,
35 rule, or regulation has occurred, is occurring, or may occur.

36 (b) If a licensee fails to forward money received for transmission

1 under this section, then the licensee shall respond to inquiries by the
2 sender with the reason for the failure unless providing a response would
3 violate a state or federal law, rule, or regulation.

4
5 23-55-611. Refunds.

6 (a) This section does not apply to:

7 (1) money received for transmission subject to the federal
8 remittance transfer definitions, 12 C.F.R. Part 1005.30, as it existed on
9 January 1, 2023; or

10 (2) money received for transmission under a written agreement
11 between the licensee and payee to process payments for goods or services
12 provided by the payee.

13 (b)(1) Every licensee shall refund to the sender within 10 days of
14 receipt of the sender's written request for a refund of all money received
15 for transmission unless any of the following occurs:

16 (A) the money has been forwarded within 10 days of the
17 date that the money was received for transmission;

18 (B) instructions have been given committing an equivalent
19 amount of money to the person designated by the sender within 10 days of the
20 date that the money was received for transmission;

21 (C)(i) the agreement between the licensee and the sender
22 instructs the licensee to forward the money at a time that is beyond 10 days
23 of the date that the money was received for transmission.

24 (ii) if funds have not yet been forwarded according
25 to the terms of the agreement between the licensee and the sender, then the
26 licensee shall issue a refund under this section; or

27 (D) the refund is requested for a transaction that the
28 licensee has not completed based on a reasonable belief or a reasonable basis
29 to believe that a crime or violation of law, rule, or regulation has
30 occurred, is occurring, or may occur.

31 (2) The refund request does not enable the licensee to:

32 (A) identify the sender's name and address or telephone
33 number; or

34 (B) identify the particular transaction to be refunded in
35 the event the sender has multiple transactions outstanding.

36

1 23-55-612. Receipts.

2 (a) This section does not apply to:

3 (1) money received for transmission subject to the federal
4 remittance transfer definitions, 12 C.F.R. Part 1005.30, as it existed on
5 January 1, 2023;

6 (2) money received for transmission that is not primarily for
7 personal, family, or household purposes;

8 (3) money received for transmission under a written agreement
9 between the licensee and payee to process payments for goods or services
10 provided by the payee; or

11 (4) payroll processing services.

12 (b) In this section, "receipt" means a paper receipt, electronic
13 record, or other written confirmation.

14 (c)(1) For a transaction conducted in person, the receipt may be
15 provided electronically if the sender requests or agrees to receive an
16 electronic receipt.

17 (2) For a transaction conducted electronically or by phone, a
18 receipt may be provided electronically.

19 (3) All electronic receipts shall be provided in a retainable
20 form.

21 (d)(1) Every licensee or its authorized delegate shall provide the
22 sender a receipt for money received for transmission.

23 (2) The receipt shall contain the following information, as
24 applicable:

25 (A) the name of the sender, to the extent the licensee or
26 its authorized delegate is required to capture this information before
27 transmission;

28 (B) the name of the designated recipient, unless the
29 licensee can determine the name of the recipient by the unique transaction or
30 identification number described in subdivision (d)(2)(D), in which case the
31 name of the recipient is not required;

32 (C) the date of the transaction;

33 (D) the unique transaction or identification number;

34 (E) the name of the licensee, National Mortgage Licensing
35 System unique ID, the licensee's business address, and the licensee's
36 customer service telephone number;

1 (F) the amount of the transaction in United States
2 dollars;

3 (G) any fee charged by the licensee to the sender for the
4 transaction; and

5 (H) any taxes collected by the licensee from the sender
6 for the transaction.

7 (e) The receipt required by this section shall be in English and in
8 the language principally used by the licensee or authorized delegate to
9 advertise, solicit, or negotiate, either orally or in writing, for a
10 transaction conducted in person, electronically, or by phone, if other than
11 English.

12
13 SECTION 10. Arkansas Code § 23-55-701 is amended to read as follows:

14 23-55-701. Maintenance of permissible investments.

15 (a) A licensee shall maintain at all times permissible investments
16 that have a market value computed in accordance with generally accepted
17 accounting principles or international financial reporting standards of not
18 less than the aggregate amount of all of its outstanding ~~payment instruments~~
19 ~~and stored value and prepaid access obligations issued or sold in all states~~
20 ~~and money transmitted from all states by the licensee~~ money transmission
21 obligations.

22 (b) A licensee transmitting virtual currency shall hold like-kind
23 virtual currency of the same volume as that held by the licensee but which is
24 obligated to consumers in lieu of the permissible investments required in
25 subsection (a).

26 (c) A licensee conducting activities as described in subsections (a)
27 and (b) shall maintain applicable levels and types of permissible investments
28 as described in subsections (a) and (b).

29 (d) ~~The~~ Except for permissible investments enumerated in § 23-55-
30 702(a), the commissioner, with respect to any ~~licensees~~ licensee, may by rule
31 or order limit the extent to which a ~~type of~~ specific investment maintained
32 by a licensee within a class of permissible investments may be considered a
33 permissible investment, ~~except for money and certificates of deposit issued~~
34 ~~by a bank. The commissioner by rule may prescribe or by order allow other~~
35 ~~types of investments that the commissioner determines to have a safety~~
36 ~~substantially equivalent to other permissible investments~~ if the specific

1 investment represents undue risk to customers that is not reflected in the
2 market value of investments.

3 (e)(1) Permissible investments, even if commingled with other assets
4 of the licensee, are held in trust for the benefit of the purchasers and
5 holders of the licensee's outstanding ~~payment instruments and stored value~~
6 ~~and prepaid access~~ money transmission obligations in the event of ~~bankruptcy~~
7 ~~or receivership of the licensee;~~

8 (A) insolvency;

9 (B) the filing of a petition by or against the licensee
10 under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as it
11 existed on January 1, 2023, for bankruptcy or reorganization;

12 (C) the filing of a petition by or against the licensee
13 for receivership;

14 (D) the commencement of any other judicial or
15 administrative proceeding for the licensee's dissolution or reorganization;
16 or

17 (E) an action by a creditor against the licensee who is
18 not a beneficiary of the statutory trust under this subsection.

19 (2) Permissible investments impressed with a trust under this
20 section shall not be subject to attachment, levy of execution, or
21 sequestration by order of any court, except for a beneficiary of the
22 statutory trusts under this section.

23 (f)(1) Upon the establishment of a statutory trust under subsection
24 (e) or if any funds are drawn on a letter of credit under § 23-55-702(a)(4),
25 then the commissioner shall notify the applicable regulator of each state in
26 which the licensee is licensed to engage in money transmission, if any, of
27 the establishment of the statutory trust or the funds drawn on the letter of
28 credit, as applicable.

29 (2) Notice shall be deemed satisfied if performed under a
30 multistate agreement or through Nationwide Multistate Licensing System.

31 (3) Funds drawn on a letter of credit, and any other permissible
32 investments held in trust for the benefit of the purchasers and holders of
33 the licensee's outstanding money transmission obligations, are deemed held in
34 trust for the benefit of the purchasers and holders on a pro rata and
35 equitable basis according to statutes under which permissible investments are
36 required to be held in this state, and other states, as applicable.

1 (4) Any statutory trust established under this subchapter shall
2 be terminated upon extinguishment of all of the licensee's outstanding money
3 transmission obligations.

4 (g)(1) The commissioner by rule or by order may allow other types of
5 investments that the commissioner determines are of sufficient liquidity and
6 quality to be a permissible investment.

7 (2) The commissioner may participate in efforts with other state
8 regulators to determine that other types of investments are of sufficient
9 liquidity and quality to be a permissible investment.

10
11 SECTION 11. Arkansas Code § 23-55-702 is amended to read as follows:
12 23-55-702. Types of permissible investments.

13 (a) Except to the extent otherwise limited by the commissioner
14 pursuant to § 23-55-701, the following investments are permissible under §
15 23-55-701:

16 (1) cash, including demand deposits, savings deposits, and funds
17 in such accounts held for the benefit of the licensee's customers in a
18 federally insured depository financial institution, and cash equivalents
19 including Automated Clearing House network items in transit to the licensee
20 and Automated Clearing House network items or international wires in transit
21 to a payee, cash in transit via armored car, cash in smart safes, cash in
22 licensee-owned locations, debit card or credit card-funded transmission
23 receivables owed by any bank, or money market mutual funds rated "AAA" by
24 Standard & Poor's, or the equivalent from any eligible rating service;

25 (2) a bank receivable or credit card receivable certificates of
26 deposit or senior debt obligations of an insured depository institution, as
27 defined in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813,
28 as it existed on January 1, 2023, or a federal credit union as defined under
29 the Federal Credit Union Act, 12 U.S.C. § 1781, as it existed on January 1,
30 2023;

31 (3) a savings deposit, a demand deposit, a certificate of
32 deposit, or senior debt obligation of an insured depository institution, as
33 defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813
34 (1994 & Supp. V 1999) an obligation of the United States or a commission,
35 agency, or instrumentality thereof; as an obligation that is guaranteed fully
36 as to principal and interest by the United States; or an obligation of a

1 state or a governmental subdivision, agency, or instrumentality thereof;

2 (4) an investment security that is an obligation of the United
3 States or a department, agency, or instrumentality thereof; an investment in
4 an obligation that is guaranteed fully as to principal and interest by the
5 United States; or an investment in an obligation of a State or a governmental
6 subdivision, agency, or instrumentality thereof; and

7 (5) ~~receivables that are payable to a licensee from its~~
8 ~~authorized delegates, in the ordinary course of business, pursuant to~~
9 ~~contracts that are less than seven days old~~ the full drawable amount of an
10 irrevocable standby letter of credit for which the stated beneficiary is the
11 commissioner that stipulates that the beneficiary need only draw a sight
12 draft under the letter of credit and present it to obtain funds up to the
13 letter of credit amount within 7 days of presentation of the items required
14 under subdivision (b)(3).

15 (b) ~~The following investments are permissible under § 23-55-701, if~~
16 ~~an investment does not exceed 30 percent of:~~

17 ~~(1) a short-term investment that is not longer than six months~~
18 ~~bearing a rating of one of the three highest grades as defined by a~~
19 ~~nationally recognized organization that rates securities;~~

20 ~~(2) commercial paper; and~~

21 ~~(3) an interest-bearing bill, note, bond, or debenture of a~~
22 ~~person whose equity shares are traded on a national securities exchange or on~~
23 ~~a national over-the-counter market.~~

24 (1) The letter of credit shall:

25 (A) be issued by a:

26 (i) federally insured depository financial
27 institution;

28 (ii) foreign bank that is authorized under federal
29 law to maintain a federal agency or federal branch office in a state or
30 states; or

31 (iii) foreign bank that is authorized under state
32 law to maintain a branch in a state that:

33 (a) bears an eligible rating or whose parent
34 company bears an eligible rating; and

35 (b) is regulated, supervised, and examined by
36 United States federal or state authorities having regulatory authority over

1 banks, credit unions, and trust companies;

2 (B) be irrevocable, unconditional, and indicate that it is
3 not subject to any condition or qualifications outside of the letter of
4 credit;

5 (C) not contain reference to any other agreements,
6 documents, or entities, or otherwise provide for any security interest in the
7 licensee; and

8 (D) contain an issue date and expiration date, and
9 expressly provide for automatic extension, without a written amendment, for
10 an additional period of 1 year from the present or each future expiration
11 date, unless the issuer of the letter of credit notifies the commissioner in
12 writing by certified or registered mail or courier mail or other receipted
13 means, at least 60 days before any expiration date, that the irrevocable
14 letter of credit will not be extended.

15 (2)(A) If any notice of expiration or nonextension of a letter
16 of credit issued under subdivision (b)(1)(D), then the licensee shall be
17 required to demonstrate to the satisfaction of the commissioner, 15 days
18 before expiration, that the licensee maintains and will maintain permissible
19 investments under § 23-55-701(a) upon the expiration of the letter of credit.

20 (B) If the licensee is not able to do so, then the
21 commissioner may draw on the letter of credit in an amount up to the amount
22 necessary to meet the licensee's requirements to maintain permissible
23 investments under § 23-55-703(a).

24 (C) Any such draw shall be offset against the licensee's
25 outstanding money transmission obligations.

26 (D) The drawn funds shall be held in trust by the
27 commissioner or the commissioner's designee, to the extent authorized by law,
28 as agent for the benefit of the purchasers and holders of the licensee's
29 outstanding money transmission obligations.

30 (3) The letter of credit shall provide that the issuer of the
31 letter of credit will honor, at sight, a presentation made by the beneficiary
32 to the issuer of the following documents on or before the expiration date of
33 the letter of credit:

34 (A) the original letter of credit, including any
35 amendments; and

36 (B) a written statement from the beneficiary stating that

1 any of the following events have occurred:

2 (i) the filing of a petition by or against the
3 licensee under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as
4 it existed on January 1, 2023, for bankruptcy or reorganization;

5 (ii) the filing of a petition by or against the
6 licensee for receivership, or the commencement of any other judicial or
7 administrative proceeding for its dissolution or reorganization;

8 (iii) the seizure of assets of a licensee by the
9 commissioner under an emergency order issued according to applicable law on
10 the basis of an action, violation, or condition that has caused or is likely
11 to cause the insolvency of the licensee; or

12 (iv) the beneficiary has received notice of
13 expiration or nonextension of a letter of credit and the licensee failed to
14 demonstrate to the satisfaction of the beneficiary that the licensee will
15 maintain permissible investments under § 23-55-703(a) upon the expiration or
16 nonextension of the letter of credit.

17 (4)(A) The commissioner may designate an agent to serve on the
18 commissioner's behalf as beneficiary to a letter of credit so long as the
19 agent and letter of credit meet requirements established by the commissioner.

20 (B) The commissioner's agent may serve as agent for
21 multiple licensing authorities for a single irrevocable letter of credit if
22 the proceeds of the drawable amount for the purposes of this section are
23 assigned to the commissioner.

24 (5) The commissioner is authorized and encouraged to participate
25 in multistate processes designed to facilitate the issuance and
26 administration of letters of credit, including without limitation services
27 provided by the National Mortgage Licensing System.

28 (6) 100 percent of the surety bond provided for under § 23-55-
29 204 that exceeds the average daily money transmission liability in this
30 state.

31 (c) Unless permitted by the commissioner by rule or by order to exceed
32 the limit as stated, the following investments are permissible under § 23-55-
33 701 to the extent specified:

34 (1) receivables that are payable to a licensee from its
35 authorized delegates in the ordinary course of business that are less than 7
36 days old, up to 50 percent of the aggregate value of the licensee's total

1 permissible investments;

2 (2) of the receivables permissible under subdivision (c)(1),
3 receivables that are payable to a licensee from a single authorized delegate
4 in the ordinary course of business may not exceed 10 percent of the aggregate
5 value of the licensee's total permissible investments;

6 (3) the following investments are permissible up to 20 percent
7 per category and combined up to 50 percent of the aggregate value of the
8 licensee's total permissible investments:

9 (A) a short-term investment, up to 6 months, bearing an
10 eligible rating;

11 (B) commercial paper bearing an eligible rating;

12 (C) a bill, note, bond, or debenture bearing an eligible
13 rating;

14 (D) United States tri-party repurchase agreements
15 collateralized at 100 percent or more with United States Government or agency
16 securities, municipal bonds, or other securities bearing an eligible rating;

17 (E) money market mutual funds rated less than "AAA" and
18 equal to or higher than "A-" by Standard & Poor's, or the equivalent from any
19 other eligible rating service; and

20 (F) a mutual fund or other investment fund composed solely
21 and exclusively of one or more permissible investments listed in subdivisions
22 (a)(1)-(3); and

23 (4) cash, including demand deposits, savings deposits, and funds
24 in such accounts held for the benefit of the licensee's customers, at foreign
25 depository institutions are permissible up to 10 percent of the aggregate
26 value of the licensee's total permissible investments if the licensee has
27 received a satisfactory rating in its most recent examination and the foreign
28 depository institution:

29 (A) has an eligible rating;

30 (B) is registered under the Foreign Account Tax Compliance
31 Act, Pub. L. No. 111-147;

32 (C) is not located in any country subject to sanctions
33 from the Office of Foreign Assets Control; and

34 (D) is not located in a high-risk or noncooperative
35 jurisdiction as designated by the international Financial Action Task Force.

36 (d) A savings deposit, a demand deposit, or a certificate of deposit

1 at a foreign depository is permissible under § 23-55-701 if the investment
2 does not exceed 10 percent.

3 ~~(d)~~(e) Any other investment is permissible under § 23-55-701 if the
4 commissioner designates, to the extent specified by the commissioner.

5 ~~(e)~~(f) The aggregate of investments under subsections (b)-(d) may not
6 exceed 50 percent of the total permissible investments of a licensee
7 calculated in accordance with § 23-55-701.

8

9 SECTION 12. Arkansas Code § 23-55-1006 is repealed.

10 ~~23-55-1006. License terms.~~

11 ~~Effective January 1, 2012:~~

12 ~~(1) a license for a money transmission issued or renewed under~~
13 ~~this chapter shall expire on December 31 of each year unless it is terminated~~
14 ~~by surrender, abandonment, a change of employment, or order of the~~
15 ~~commissioner; and~~

16 ~~(2) a license for a currency exchange issued or renewed under~~
17 ~~this chapter shall expire on December 31 every 2 years unless it is~~
18 ~~terminated by surrender, abandonment, a change of employment, or order of the~~
19 ~~commissioner.~~

20

21 /s/Maddox

22

23

24 APPROVED: 4/4/23

25

26

27

28

29

30

31

32

33

34

35

36